BOARD OF APPEALS for MONTGOMERY COUNTY

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Case No. CBA-470-A

PETITION OF KENSINGTON NURSERY SCHOOL

OPINION OF THE BOARD

(Opinion Adopted December 12, 2007) (Effective Date of Opinion: January 11, 2008)

Case No. CBA-470-A is an application for modification of an existing special exception for a private educational institution which seeks approval of a building addition. The Hearing Examiner for Montgomery County held a hearing on the application on January 31, 2005, closed the record in the case on April 21, 2006, and on May 18, 2006, issued a Report and Recommendation for approval of the modification, subject to conditions. The Board of Appeals considered the Report and Recommendation at its Worksession on May 31, 2006, and deferred action pending receipt of a site plan, as described in proposed Condition No. 3 in the Report and Recommendation. At its Worksession on October 17, 2007 the Board considered a letter from Douglas Smith from Kensington Nursery School, which enclosed the require site plan and provided additional information about stormwater management compliance. Mr. Smith's letter also requests that the Board eliminate the Hearing Examiner's recommended Condition No. 7 which required that class times be staggered so that no class time begins or ends within 30 minutes of another class. Kensington Nursery School asserted that there were no traffic or parking impacts which justified this condition. At the October 17, 2007 Worksession the Board gave Kensington Nursery School an additional 30 days to submit evidence in support of its assertion. The Board received the nursery school's response in a letter dated November 29, 2007 from Robert Hillman.

Decision of the Board: Special Exception Modification **Granted**Subject to Conditions Enumerated Below.

The subject property is Lot 50C, Block 3200, Kensington Heights Subdivision, located at 3202 Decatur Avenue, Kensington, Maryland, 20895, in the R-60 Zone.

The Board of Appeals again considered Hearing Examiner's Report and Recommendation, together with KNS's additional information regarding traffic and parking, at its Worksession on December 12, 2007. After careful consideration and review of the record, the Board finds that the modification should be granted, and that

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staggering of class times is not necessary. Therefore, the Board adopts the Hearing Examiner's Report and Recommendation and **grants** the special exception modification subject to the following conditions, as revised:

- 1. The Petitioner shall be bound by all of its testimony and exhibits of record, including the Site Plan Exhibit 51(a), and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's report and in this opinion.
- 2. KNS will apply for a minor subdivision approval to combine the two lots on which it is located.
- 3. Stormwater Management controls shall be implemented as described in Douglas Smith's letter of August 29, 2007, and as depicted on Exhibit 51(a).
- 4. All terms and conditions of the approved special exception shall remain in full force and effect, except as specifically amended by this modification.
- 5. Petitioner must obtain approval from the Montgomery County Planning Board for a new plan of subdivision before issuance of any building permit or sediment control permit, as applicable.
- 6. Petitioner shall hold no more than four events per year (including the two mandatory all-parent meetings) with an attendance resulting in a need for more parking than can be accommodated by the gravel parking area in front of the school and the paved area on the west side of the school building.
- 7. No enrollment increase shall be sought under this special exception during the five-year period immediately following approval of this modification.
- 8. In the event that the 15-inch-diameter tree shown slightly southeast of the existing building on Exhibit 22 dies as a result of construction activities connected with this modification, Petitioner shall replace it with a tree of a similar species, in the closest viable location to the current location, in the next growing season.
- 9. There shall be no queuing of cars on Decatur Avenue.
- 10. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Catherine G. Titus, Vice-Chair, seconded by Caryn L. Hines, with Wendell M. Holloway, David K. Perdue and Allison Ishihara Fultz, Chair, in agreement:

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BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book of the Board of Appeals for Montgomery County, Maryland this 11th day of January, 2008.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.